



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL

Lyn Utrecht, Esq.
Ryan, Phillips, Utrecht & MacKinnon
1133 Connecticut Avenue, NW
Suite 300
Washington, DC 20036

NOV 17 2006

RE: MUR 5440
The Media Fund

Dear Ms. Utrecht:

Based on three complaints filed with the Federal Election Commission,¹ and information supplied by your client, The Media Fund ("TMF"), the Commission, on September 14, 2004, found that there was reason to believe that TMF violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that these violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing

¹ These complaints resulted in the following MURs: (1) MUR 5403 (filed by Democracy 21, the Campaign Legal Center, and the Center for Responsive Politics, on January 16, 2004); (2) MUR 5427 (filed by Bush-Cheney '04, Inc., on March 10, 2004); and (3) MUR 5440 (filed by the Republican National Committee and Bush-Cheney '04, Inc., on April 1, 2004). These matters all contained similar allegations regarding TMF. The Commission eventually severed TMF from MUR 5403 and moved it into MUR 5440. The Commission also merged MUR 5427 into MUR 5440.

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five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Mark A. Goodin, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence H. Norton
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)

) MUR 5440

The Media Fund

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GENERAL COUNSEL'S BRIEF

I. INTRODUCTION

This matter was generated by three separate complaints filed with the Federal Election Commission, alleging that The Media Fund ("TMF") violated the Federal Election Campaign Act of 1971, as amended ("the Act").¹ These complaints alleged, among other things, that TMF failed to register as a political committee and publicly disclose its contributions and expenditures through reports filed with the Commission despite having received more than \$1,000 in contributions and having made more than \$1,000 in expenditures. After considering the complaints, responses to them, and publicly available information, the Commission opened an investigation to determine whether TMF violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) by failing to register as a political committee with the Commission, by failing to report contributions and expenditures, by knowingly accepting contributions in excess of \$5,000, and by knowingly accepting corporate and union contributions. See Factual and Legal Analysis for The Media Fund (setting forth basis of reason to believe findings).

The ensuing investigation confirmed and uncovered additional evidence that TMF accepted over \$1,000 in contributions and made over \$1,000 in expenditures for the purpose of electing John Kerry and defeating George Bush in the 2004 Presidential election. The

¹ These complaints were filed by: (1) the Republican National Committee and Bush-Cheney '04, Inc. (MUR 5440); (2) Bush-Cheney '04, Inc. (MUR 5427); and (3) Democracy 21, the Campaign Legal Center, and the Center for Responsive Politics (MUR 5403). The Commission eventually severed TMF from MUR 5403 and moved it into MUR 5440. The Commission also merged MUR 5427 into MUR 5440.

1 investigation also confirmed that TMF satisfied the major purpose test. Based on the results of
2 the investigation, which are set forth and analyzed below, the General Counsel is prepared to
3 recommend that the Commission find probable cause to believe that TMF violated 2 U.S.C. §§
4 433 and 434 by failing to register with the Commission as a political committee and report its
5 contributions and expenditures, that TMF violated 2 U.S.C. § 441a(f) by knowingly accepting
6 contributions in excess of \$5,000, and that TMF violated 2 U.S.C. § 441b(a) by knowingly
7 accepting corporate and union contributions.

8 **II. FACTUAL BACKGROUND**

9 TMF is an unincorporated entity organized under Section 527 of the Internal Revenue
10 Code, and it filed its Notice of 527 Status with the Internal Revenue Service on November 5,
11 2003. TMF has not registered as a political committee with the Commission. TMF was founded
12 by Harold Ickes, a high-ranking member of the Democratic National Committee.²

13
14 From its formation in late 2003 until it curtailed its operations shortly after the
15 November 2004 elections, TMF raised and spent almost \$60 million for political campaign
16 activity.³ Specifically, TMF conducted an advertising campaign in the 2004 Presidential
17 Election "battleground states" criticizing George Bush and/or praising John Kerry in the months
18 prior to the election.

² Mr. Ickes, who simultaneously served on the DNC Executive Committee, was president of TMF from its founding until May 2004. At that time, he became Chief of Staff of America Coming Together ("ACT") and Erik Smith took over as president of TMF. However, Mr. Ickes consulted frequently with Mr. Smith, and Mr. Ickes continued to spearhead TMF's fundraising efforts, until November 2004.

³ See TMF's IRS Forms 990 (2003 and 2004). As discussed further below, TMF has conducted more limited activities since the 2004 election. It has raised an additional \$1.025 million from January 2005 through October 2006, bringing its total contributions (for all years) to \$60,439,183.

Mr. Ickes testified, and the documents indicate, that TMF was formed to fill the gap created by the elimination of party committee "soft money" in supporting Democratic Party candidates and particularly the Democratic Party's Presidential nominee.

TMF believed that, without its media efforts, the eventual Democratic nominee would be at an insurmountable financial disadvantage because, having exhausted most of the available hard money resources in the Spring 2004 primary battle, the campaign would not receive replenishment through public funding until his nomination at the Democratic Convention.

While TMF received substantial sums from small individual donors, approximately 93% of its receipts – over \$55 million – came from labor organizations, corporations, and individuals who gave in amounts that far exceeded the \$5,000 limit established under the Act, for contributions to political committees.⁴ In fact, TMF received more than \$20 million from just eight individual donors.⁵ As discussed in more detail below, TMF's solicitations to potential

⁴ TMF received the majority of its funds through a joint fundraising committee, Joint Victory Campaign 2004 ("JVC"). The two participants in JVC are TMF and ACT. ACT, a non-connected committee with a federal and non-federal account, focused on voter identification, registration, and get-out-the-vote activities during the 2004 election cycle.

FEC disclosure reports of ACT (Committee ID C00388876) and IRS disclosure reports of America Coming Together—Non-Federal Account.

JVC received contributions from individuals in excess of \$5,000 and it also received labor and corporate contributions. JVC transferred proceeds to TMF on an irregular basis (\$3 million to TMF in 2003 and \$41.475 million to TMF in 2004). Therefore, we have estimated the amount of excessive and labor/corporate funds that JVC transferred to TMF based on JVC's overall receipts. Since 85% of JVC's receipts came from donations in excess of \$5,000 and 6% of its receipts came from corporations or labor organizations, we estimate that 85% of the funds that JVC transferred to TMF were excessive contributions and 6% were prohibited labor/corporate funds.

JVC has a federal account and a non-federal account. See Statement of Organization of JVC (FEC Form 1) (Nov. 24, 2003) and Notice of Section 527 Status of JVC (IRS Form 8871) (Nov. 6, 2003). JVC later changed the name of its federal account to "Victory Campaign 2004." See Statement of Organization (FEC Form 1) (amended Jan. 5, 2004). Furthermore, it has referred to its non-federal account as "Victory Campaign 2004" in one of its IRS filings. See Form 990 of JVC (Aug. 16, 2004). For the sake of convenience, we will refer to all accounts of this entity as "JVC," unless otherwise noted.

⁵ These donors gave either to TMF or to JVC (TMF's joint fundraising committee, which split donations between TMF and ACT, as explained at footnote 10, *infra*): Peter Lewis - \$14.05 million to JVC; George Soros - (footnote continues on the following page)

1 donors made clear that the funds received would be used to sponsor advertisements opposing the
2 election of George Bush in "battleground states." TMF touted its ongoing advertising campaigns
3 as the cause of decreased public support for George Bush in these "battleground states."

4 TMF spent approximately \$53.39 million, or more than 92% of its reported
5 disbursements, on television, radio and newspaper advertisements and direct mail pieces
6 criticizing George Bush, including ads (discussed below) that expressly advocated Bush's defeat
7 or Kerry's election.⁶ TMF's remaining disbursements appear to have been primarily for
8 administrative and overhead expenses (including the cost of its fundraising activities). Since the
9 2004 election, TMF has curtailed its operations, its website is no longer active, and—except for
10 two advertisements in connection with 2006 Senate races—it has limited its disbursements
11 primarily to donations to other organizations and payments for legal and administrative costs.⁷

12 **III. TMF FAILED TO REGISTER AND REPORT AS A POLITICAL COMMITTEE**

13 The Act defines a "political committee" as any committee, club, association, or other
14 group of persons that receives "contributions" or makes "expenditures" which aggregate in
15 excess of \$1,000 during a calendar year. *See* 2 U.S.C. § 431(4)(A). For the purpose of
16 triggering political committee status, the Act defines the terms "contributions" and
17 "expenditures" as including "anything of value made by any person for the purpose of
18 influencing any election for Federal office." *See* 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i).

\$12.05 million to JVC; Steve Bing - \$9.99 million to JVC; Ted Waitt - \$5 million to JVC; Jonathan McHale - \$1.8 million to TMF; Joseph M. Field - \$1.575 million to TMF; Christine L. Mattso - \$1.2 million to TMF; and Agnes Varis - \$1.155 million to JVC.

⁶ *See* IRS Forms 8872 for TMF (2004) (summarized in letter from James Lamb to Mark A. Goodin (July 22, 2005)).

⁷ *See* footnote 20, *infra*.

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1 TMF exceeded the statutory threshold for political committee status in two separate
2 ways. First, TMF received contributions exceeding \$1,000 in response to fundraising
3 solicitations clearly indicating that funds received would be targeted to the election or defeat of a
4 clearly identified candidate in the 2004 Presidential election. Second, TMF made "expenditures"
5 exceeding \$1,000 when it paid for advertising expressly advocating the election or defeat of
6 candidates for President in 2004. As a result of these contributions and expenditures, and
7 because its major purpose was political campaign activity, TMF should have registered as a
8 political committee and disclosed its receipts and disbursements to the public through reports
9 filed with the Commission, and complied with the Act's contribution limits and prohibitions.

10 A. **TMF Exceeded the Statutory Threshold for Contributions When It Received**
11 **Over \$1,000 in Response to Solicitations Clearly Indicating that**
12 **Contributions Would be Targeted to the Election or Defeat of a Clearly**
13 **Identified Candidate for Federal Office**
14

15 Money received in response to fundraising solicitations clearly indicating that the
16 funds being sought would be targeted to the election or defeat of clearly identified federal
17 candidates constitutes contributions under the Act. 2 U.S.C. § 431(8)(A); *FEC v. Survival*
18 *Education Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995); *see also* Complaint, *FEC v. Club for*
19 *Growth, Inc.*, No. 1:05-cv-01851-RMU (D.D.C. filed Sept. 19, 2005). In *Survival Education*
20 *Fund*, the court considered whether proceeds received in response to a fundraising
21 solicitation mailed to the general public by two 501(c)(4) organizations during the 1984
22 Presidential race constituted "contributions" under the Act. The cover letter to the solicitation
23 included this language:

24 Funds are *urgently* needed to help defray the enormous cost of mounting,
25 organizing, publicizing and coordinating this nationwide effort....

26 Your special election-year contribution will help us communicate your views to
27 hundreds of thousands of members of the voting public, letting them know why
28 Ronald Reagan and his anti-people policies *must* be stopped. So, please, return

1 your survey and your check *immediately*. Anything you can give at this time --
2 \$50, \$100, \$25[0], \$500, \$1,000, \$2,500 or more -- will help us reach more
3 people, and increase the effectiveness of our election-year work.

4 *Survival Education Fund*, 65 F.3d at 288-89 (emphasis in original). The Second Circuit
5 considered whether the solicitation sought "contributions" and was subject to the Act's
6 disclaimer requirements under 2 U.S.C. § 441d(a).

7 Stating that it was unnecessary to consider whether the mailer constituted express
8 advocacy, the court analyzed whether the mailer solicited "contributions" based on *Buckley's*
9 statement that contributions made to other organizations but earmarked for political purposes
10 were contributions made "for the purpose of influencing elections" and, thus, were properly
11 covered by the Act. *See id.* at 294 (quoting *Buckley v. Valeo*, 424 U.S. 1, 78 (1976)). In
12 interpreting the phrase "earmarked for political purposes," the court stated:

13 The only contributions "earmarked for political purposes" with which the *Buckley*
14 Court appears to have been concerned are those that will be converted to
15 expenditures subject to regulation under FECA. Thus, *Buckley's* definition of
16 independent expenditures that are properly within the purview of FECA provides
17 a limiting principle for the definition of contributions in § 431(8)(A)(i), as applied
18 to groups acting independently of any candidate or his agents and which are not
19 "political committees" under FECA.... Accordingly, disclosure is only required
20 under § 441d(a)(3) for solicitations of contributions that are earmarked for
21 activities or "communications that expressly advocate the election or defeat of a
22 clearly identified candidate" *Even if a communication does not itself*
23 *constitute express advocacy, it may still fall within the reach of § 441d(a) if it*
24 *contains solicitations clearly indicating that the contributions will be targeted to*
25 *the election or defeat of a clearly identified candidate for federal office....* Only if
26 the solicitation makes plain that the contributions will be used to advocate the
27 defeat or success of a clearly identified candidate at the polls are they obliged to
28 disclose that the solicitation was authorized by a candidate or his committee.

29 *Id.* at 295 (quoting *Buckley*, 424 U.S. at 80) (emphasis added). Based on this reasoning, the
30 court held that the mailer solicited contributions within the meaning of § 441d, citing the
31 mailer's statement, "Your special election-year contribution will help us communicate your
32 views to hundreds of thousands of members of the *voting public*, letting them know why Ronald

1 Reagan and his anti-people policies *must* be stopped.” *Id.* (emphasis in original). According to
2 the court, this statement “leaves no doubt that the funds contributed would be used to advocate
3 President Reagan’s defeat at the polls, not simply to criticize his policies during the election
4 year.” *Id.*

5 **1. TMF’s Solicitations Resulted in “Contributions”**

6 Like the solicitations in *Survival Education Fund*, TMF’s numerous fundraising
7 presentations, letters and e-mails used language clearly indicating that the funds received
8 would be targeted to the election or defeat of a clearly identified candidate—here, John Kerry
9 or George Bush, respectively. From its inception to the end of 2004, TMF received almost
10 \$15 million directly from donors, including those who received such solicitations, and (as
11 discussed further below) it received over \$44 million in donations processed through its joint
12 fundraising committee (JVC).

13 **a. Harold Ickes’s Fundraising Presentations**

14 In the Fall of 2003, TMF’s President, Harold Ickes, made oral presentations to numerous
15 individuals and groups in an effort to raise money for TMF specifically to counter “the Bush
16 onslaught” of “enormous financial resources.” Mr. Ickes’s
17 fundraising message is summarized in a supporting powerpoint presentation, *id.* at 41:21-42:18
18 and Exhibit 3 to Ickes Dep. (I&E - MUR 5440 005592-604), which included slides containing
19 the following messages:⁸

- 20 • “Bush can be beaten” (I&E - MUR 5440 005592);
- 21
- 22 • “The Race for 270; The fight for the White House is a state-by-state battle”
- 23 (I&E - MUR 5440 005594);
- 24

⁸ Mr. Ickes recognized the images in this powerpoint presentation, although he was not clear whether the sequence of slides remained constant in all presentations. Ickes Dep. at 42:3-8.

- 1 • "270 Electoral Votes (EVs) Needed to Win" (*Id.*);
- 2
- 3 • "17 Key States Will Decide the 2004 Election" (*Id.*);
- 4
- 5 • "The Media Fund: The March thru August Equalizer" (I&E - MUR 5440
- 6 005601);
- 7
- 8 • "The Media Fund: 17 state media plan; Timed to counter Bush onslaught...
- 9 Will challenge Bush: trust, competence, economy, and other issues...." (*Id.*);
- 10
- 11 • "The Media Fund: Strategic Assumptions
- 12 March to July media is key to Republican strategy...
- 13 Clinton Campaign spent millions of dollars on TV in spring of 1996
- 14 and many voters had made up their minds and were ready to re-elect
- 15 Clinton/Gore by the convention
- 16 We must counter this to win" (*Id.*)
- 17
- 18 • "With your help" juxtaposed above a picture of George Bush leaving the
- 19 White House as he walks up the steps of the Presidential helicopter (I&E -
- 20 MUR 5440 005604).
- 21

22 **b. Solicitations Sent Directly to Potential Donors**

23 In addition to TMF's efforts to raise funds from the general public, the documents
24 produced by TMF demonstrate that a number of solicitations were sent directly to specific
25 potential donors.⁹ These solicitations clearly indicated that the funds received would be
26 targeted to the defeat of George Bush or the election of John Kerry. In these solicitations,
27 TMF highlighted the effectiveness of specific ads, as well as its overall advertising efforts, in
28 reducing public support for Bush and increasing public support for Kerry. As the following
29 examples demonstrate, shortly after receiving these solicitations, the individuals contributed
30 substantial sums to TMF:

⁹ TMF did not keep fundraising records of whether it received donations in response to particular solicitations. Nevertheless, as described in this section, it is clear from the documents produced in this matter (including e-mails and letters) that some donors gave funds to TMF in response to specific solicitations.

- 1 • TMF's president, Harold Ickes, sent a letter to Jim Clark on June 15, 2004,
2 which described the effectiveness of TMF's ad campaign.
3 . Mr. Ickes attached a number of enclosures, including a TMF
4 memorandum describing public opinion polls conducted before and after "the
5 critical nine-week period between March 3 and May 4 when Bush was at his
6 highest spending levels and Kerry was at his lowest...." The
7 TMF memorandum noted that the polls "found Bush's job performance
8 among swing voters f[e]ll in the states where TMF was advertising." It
9 also explained that during this "critical" time period, "TMF and [its] allies
10 made a significant impact ensuring a Democratic message was on the
11 airwaves at competitive levels." The following month, on July 27, 2004,
12 Mr. Clark donated \$1 million to TMF. IRS Form 8872 for TMF (July 1 –
13 Sept. 30, 2004).
14
15 • Mr. Ickes sent an e-mail to Joe Field on October 17, 2004, soliciting funds for
16 TMF so that it could run its "Saudi ads" more frequently in certain states.
17 Mr. Ickes described the results of polls taken
18 before and after TMF's "Saudi ads" were run in the St. Louis television
19 market, noting that Kerry went from trailing Bush to leading Bush, and that
20 Kerry's support among women and independents rose significantly.
21 Mr. Ickes explained that TMF was trying to increase the frequency
22 of these ads in Florida, Ohio and Wisconsin, and that an "additional
23 \$500,000" would significantly advance that goal. *Id.* Within one week of
24 Mr. Ickes's solicitation, on October 22, 2004, Mr. Field donated \$500,000 to
25 TMF. IRS Form 8872 (Oct. 14 – Nov. 22, 2004). In a letter enclosing this
26 donation, Mr. Field expressed his "hope that the valiant efforts of [Mr. Ickes]
27 and all the others who are participating in the Kerry/Edwards campaign will
28 save our country from the fright of another four years under a Bush/Cheney
29 regime."
30
31 • TMF's creative director, Redmond Walsh, sent an e-mail to Norman Bender
32 on October 7, 2004, which solicited \$25,000 to be used for TMF's "new
33 Saudi ad campaign project." Mr. Walsh attached
34 a memorandum from TMF's research firm, which described the key findings
35 regarding TMF's "Saudi TV spots as they were tested" in St. Louis.
36 Mr. Walsh highlighted the finding that before the TMF ads ran,
37 "Kerry trailed Bush by 1 point," but that after the ads ran, "Kerry led Bush by
38 9 points...." Mr. Walsh concluded that "[w]e believe the
39 above memo clearly shows this message can and will make the crucial
40 difference." Two weeks later, on October 22, 2004, Mr. Bender donated
41 \$25,000 to TMF. IRS Form 8872 for TMF (Oct. 14 – Nov. 22, 2004).
42

2. The Solicitations by the Joint Fundraising Committee on Behalf of
TMF Resulted in "Contributions"

As noted above, TMF also raised funds through its joint fundraising committee,

JVC.¹⁰ JVC's solicitations consistently referred to specific federal candidates, although some also made a general reference to (non-specific) non-federal candidates. Most of the JVC solicitations refer only to President Bush or the Presidential race. Moreover, in response to specific solicitations from Mr. Ickes, which indicated that the funds received would be targeted to the defeat of George Bush, some donors gave funds earmarked for TMF through JVC. Similar to the solicitations in *Survival Education Fund* and TMF's own solicitations discussed above, JVC's solicitations clearly indicated that the contributions would be used to target the defeat of George Bush or the election of John Kerry. JVC's fundraising efforts therefore resulted in contributions to TMF.¹¹

¹⁰ Under the Joint Fundraising Agreement that established JVC, the participants (TMF and ACT) agreed that the first \$5,000 of any donation from any individual, partnership, or federally registered political committee would go to ACT. "Amendment to Joint Fundraising Agreement" (Nov. 14, 2003). The remainder of any such donations, and all other donations, then would be split between TMF and ACT. *Id.* Furthermore, the first \$5,000 of each donation to ACT would go to ACT's federal account. *Id.* All nonfederal donations to ACT, including any portion of a donation that would cause the donor to exceed applicable contribution limits, would go to ACT's nonfederal account. *Id.* Also, a donor could specify the portion of his donation that should go to TMF and/or ACT. JVC did not keep fundraising records indicating whether donations were received in response to particular solicitations.

¹¹ Where a committee's communication clearly indicates that the funds received will be targeted to the election or defeat of only (one or more) federal candidates, all funds received from such a communication count as federal funds. *See Survival Education Fund*, 65 F.3d at 295. The fact that JVC is a joint fundraising committee does not affect this conclusion. The regulations restricted JVC's operations in numerous ways based on the status of its participating committees (TMF and ACT). For example, if a joint fundraising committee receives funds from a prohibited source, then those funds must go to a participant that can lawfully accept such contributions, regardless of the allocation formula under the joint fundraising agreement. *See* 11 C.F.R. § 102.17(c)(4)(ii).

a. JVC's General Solicitations

One of the documents used to solicit funds to JVC explained "to potential donors what The Media Fund was and the need for it and, ultimately, the groundwork for asking them to support it financially." This fundraising document, entitled "The Media Fund; Victory Campaign 2004; A Strategic Plan for Winning," contains the following messages:¹²

- "In 2004, the President and his allies ... promise to spend much more than twice as much [as in 2000] to secure his re-election. And with an uncontested race for nomination, he will begin to use those resources on television before spring to define the Democratic Party's nominee and solidify his own vote."
- "The Media Fund is an independent committee created by leading Democrats to conceive, produce and place TV and radio ads, print and Internet communication[s] between mid-March and the Republican National Convention in late August in the 17 battleground states to define the issues for the 2004 watershed election."
- "In order to make the *needed impact on key voting constituencies* to 'break through' to the *needed voters in the 17 battleground state[s]* it is critical to aggregate enough resources with one organization to run a sufficient amount of media (TV, radio, newspaper and internet) in key media markets with effective messages at the right time in the process."
- "Prior to the enactment of the McCain-Feingold campaign finance reform law ... the [Democratic National Committee] was able to raise tens of million[s] for soft money issue ads supportive of the Democratic presidential nominee.... Under the new law, the DNC ... will not be able to finance any soft money activities and will not be able to raise enough money to pay for sufficient media in 2004 to make an impact. Without the aggregated resources of The Media Fund, the Democrats simply will not be competitive in this pre-convention period."

¹² Mr. Ickes testified that there were various versions of this document, but that he was "sure [he] used a document like this" in attempting to raise funds for TMF as part of its joint fundraising efforts.

He noted that this document highlighted that "the White House—the presidency was of considerable interest to donors...."

- 1 • "Whoever emerges in March as the presumptive Democratic nominee will
2 have spent virtually all of his pre-convention money and will likely have
3 insufficient funds for the substantial media needed to define the issues and
4 candidates up to the late July Democratic convention—that is, *he will have*
5 *insufficient funds to keep him visible and competitive.*"
6
7
- 8 • "The general election effectively begins all out by late March. By 2
9 September, the end of the Republican's convention, the issues will have
10 largely been defined in [the] minds of the critical swing voters. Democrats
11 act at our peril if we wait until late July to begin sufficient media, and thereby
12 permit the Republicans to define the race and effectively win the election by
13 late August."
14
- 15 • "As so graphically underscored by the 2000 election, the battle for the White
16 House is decided not by the national popular vote, but by electoral vote—
17 individual state, by individual state.... *Thus 17 states will decide who takes*
18 *the oath of office for President in January 2005.*"
19
- 20 • "The key to winning enough of these 17 battleground states will be the
21 turnout of Democratic base constituencies (African Americans, women,
22 union households, Hispanics, etc.), and, very importantly, *the ability to*
23 *identify the key swing votes [sic] who are open to persuasion to vote*
24 *Democratic.* Figuring out the effective issue messages that will move these
25 swing voters and delivering those messages between March and late August,
26 before the race is defined by the Bush campaign, is critical to the outcome of
27 the 2004 race."
28
29

30 **b. JVC Solicitations for the Labor "Challenge"**

31 In connection with one of TMF's specific efforts to raise money (largely through
32 JVC), Mr. Ickes highlighted the effectiveness of TMF's ads in depressing public support for
33 George Bush. In early 2004, Mr. Ickes arranged for a fundraising "challenge," whereby
34 George Soros and Peter Lewis agreed to make matching donations of up to \$20 million to

1 TMF (through JVC) on the condition that a collection of labor organizations make aggregate
2 donations in the same amount.¹³

3 Following up on this effort, on April 25, 2004, Mr. Ickes wrote a letter to the
4 Presidents of the AFL-CIO and AFSCME (with copies to George Soros and Peter Lewis) to
5 prompt them to contribute the remaining funds called for under this fundraising "challenge."

6 Mr. Ickes enclosed a
7 polling report in that letter and noted that "the fact that Kerry is dead even with Bush in these
8 [17 battleground states] and now leads with Independents by 7 points, after trailing Bush
9 with them, speaks to the effectiveness of the combined paid media programs of TMF and
10 AFL-CIO." *Id.* at 2.

11 Mr. Ickes testified that TMF actually raised the amount of money proposed by this
12 fundraising "challenge," although it appears that various labor
13 organizations counted the value of their own media efforts toward their contribution goals.
14 See IRS Form 8872 of TMF. Labor organizations contributed over \$8 million to TMF in
15 2004, and Messrs. Soros and Lewis gave over \$26 million to TMF's joint fundraising
16 committee (JVC). See IRS Forms 8872 of JVC and TMF.

17 **3. Conclusion**

18 These solicitations clearly indicate that the funds received will be targeted to defeat
19 George Bush and elect John Kerry in the 2004 general election. The clear message of the
20 solicitations is that the donated funds will ensure that TMF's media efforts are, and will be,
21 effective in depressing support for Bush and in elevating support for Kerry. As a result, all funds

¹³ As Mr. Ickes outlined this "challenge" in February 2004, the funding proposal included \$8 million in the form of the AFL-CIO's own media efforts and \$12 million in cash donations from various other labor organizations.

1 received in response to these solicitations constituted contributions received by TMF. *Survival*
2 *Education Fund*, 65 F.3d at 295.

3 TMF raised millions of dollars from the solicitations described above—far
4 surpassing the \$1,000 statutory threshold for political committee status. *See* 2 U.S.C. §
5 431(8)(A). Accordingly, based on contributions received, TMF was required to register as
6 a political committee and commence filing disclosure reports with the Commission by no
7 later than its initial receipt of contributions of more than \$1,000, on December 31, 2003.

8 **B. TMF Exceeded the Statutory Threshold for Expenditures by Spending Over**
9 **\$1,000 for Express Advocacy**

10 TMF made “expenditures” by paying for a variety of communications in which it
11 expressly advocated the election or defeat of clearly identified federal candidates. Furthermore,
12 TMF made more than \$1,000 in such “expenditures,” thereby exceeding the statutory threshold
13 for political committee status. *See* 2 U.S.C. § 431(4)(A).

14 A communication contains express advocacy when it uses phrases such as “vote for the
15 President,” “re-elect your Congressman,” or “Smith for Congress,” or uses campaign slogans or
16 words that in context have no other reasonable meaning than to urge the election or defeat of one
17 or more clearly identified candidates, such as posters, bumper stickers, or advertisements that
18 say, “Nixon’s the One,” “Carter ‘76,” “Reagan/Bush,” or “Mondale!” *See* 11 C.F.R.
19 § 100.22(a); *see also* *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 249 (1986)
20 (“*MCFL*”) (“[The publication] provides in effect an explicit directive: vote for these (named)
21 candidates. The fact that this message is marginally less direct than “Vote for Smith” does not
22 change its essential nature.”). Courts have held that “express advocacy also includes verbs that
23 exhort one to campaign for, or contribute to, a clearly identified candidate.” *FEC v. Christian*
24 *Coalition*, 52 F. Supp. 2d 45, 62 (D.D.C. 1999) (explaining why *Buckley*, 424 U.S. at 44, n.52,

1 included the word "support," in addition to "vote for" or "elect," on its list of examples of
2 express advocacy communication).

3 The Commission's regulations further provide that express advocacy includes
4 communications containing an "electoral portion" that is "unmistakable, unambiguous, and
5 suggestive of only one meaning" and about which "[r]easonable minds could not differ as to
6 whether it encourages actions to elect or defeat" a candidate when taken as a whole and with
7 limited reference to external events, such as the proximity to the election. *See* 11 C.F.R.
8 § 100.22(b). In its discussion of then-newly promulgated section 100.22, the Commission stated
9 that "[c]ommunications discussing or commenting on a candidate's character, qualifications or
10 accomplishments are considered express advocacy under new section 100.22(b) if, in context,
11 they have no other reasonable meaning than to encourage actions to elect or defeat the candidate
12 in question." *Express Advocacy; Independent Expenditures; Corporate and Labor Organization*
13 *Expenditures*, 60 Fed. Reg. 35292, 35295 (July 6, 1995).

14 TMF's communications expressly advocated John Kerry's election and George Bush's
15 defeat by urging voters to choose the named candidate or by commenting on the candidate's
16 character, qualifications, and accomplishments. Further, in the context of their proximity to the
17 upcoming Presidential election, these communications are "unmistakable, unambiguous, and
18 suggestive of only one meaning" – to vote for Kerry. These communications, whose costs far
19 exceeded the \$1,000 expenditure threshold for political committee status, include three mailers,
20 two television advertisements, and a radio advertisement.

21 **1. TMF's Mailers Expressly Advocated John Kerry's Election and**
22 **George Bush's Defeat**
23

24 TMF made expenditures of substantially more than \$1,000 for each of three mailers that
25 expressly advocated John Kerry's election and George Bush's defeat in the upcoming

Presidential election.¹⁴

All three of these mailers,

which TMF produced for distribution in Florida, related to the upcoming election by identifying one or both of the competing candidates by name and image.

The first mailer addresses rising college tuition costs and states in boldtype: "John Kerry Wants Every Child To Be Able To Afford A College Education And Live The American Dream."

The accompanying text addresses John Kerry's plan for the "American Dream," declaring: "*We need a President who encourages pursuit of the American Dream instead of dashing these hopes.* John Kerry will make college affordable for every American." (emphasis added). The ad concludes with the tagline: "John Kerry – Making the American Dream a Reality." The second mailer describes details of the Kerry-Edwards health care plan and announces in large-font text: "George W. Bush and Dick Cheney have NO PLAN to lower health care costs." The juxtaposition of the candidates' health care initiatives is followed with the tagline: "*For Florida's Families. The Choice is Clear.*" (emphasis added).

The first and second mailers constitute "express advocacy" under section 100.22(a). Each of these communications refers to the "need" or the "choice" for a particular kind of President (*i.e.*, one who encourages pursuit of the "American Dream" or who has a plan to lower health care costs), followed by the identification of John Kerry as that type of candidate. See 11 C.F.R. § 100.22(a) (express advocacy includes phrases such as "'vote Pro-Choice' accompanied by a listing of clearly identified candidates described as ... Pro-Choice"); see also *MCFL*, 479

¹⁴ TMF states that its "Direct Mail" expenses were \$1,673,362.75. Letter from James Lamb to Mark A. Goodin (July 22, 2005); see IRS Forms 8872 for TMF. However, it has not been able to provide more detailed costs for each of the 20 mailers that it produced. TMF has produced information that the printing cost of the first mailer addressed above was \$66,400. Based on this cost, it is certain that the other two mailers cost over \$1,000 each to print and to mail.

U.S. at 249 (express advocacy existed where publication exhorted readers "to vote for 'pro-life' candidates [and] also identifie[d] ... specific candidates fitting that description").

The first and second mailers also constitute "express advocacy" under section 100.22(b). The first mailer's message – "We need a President who..." – closely resembles the exhortation the Commission recently found to be express advocacy in MUR 5024R (Kean), where an organization declared: "Tell Tom Kean Jr. ... NEW JESRSEY NEEDS NEW JERSEY LEADERS." See MUR 5024R Factual and Legal Analysis at p.17. Just as voters could get a "New Jersey leader" by voting against Kean, the first TMF mailer tells voters in "*need [of] a President* who encourages pursuit of the American Dream" to vote for John Kerry. Similarly, the unmistakable "choice" described in the second TMF mailer is the choice between the two featured candidates in the upcoming election; based on the presentation of facts favorable to Kerry, the mailer is urging voters to choose Kerry.

The third TMF mailer also constitutes "express advocacy" under section 100.22(b). It focuses on John Kerry's military service, highlighting his combat medals, "personal courage," and bravery in saving fellow soldiers, while observing, in text positioned next to pictures of George Bush and Dick Cheney, that "These Men Could Have Served In Vietnam, But Didn't."

The mailer claims that Kerry's military service provides him a "unique perspective on decisions about sending our children into combat and caring for them when they return and when they retire." The mailer links Kerry's 30-year-old military record to current events by stating: "Vietnam was a long time ago. Some say it's not important now, while others must think it is"

This mailer extols the candidate's character and fitness for the office of President, citing his bravery and selflessness, which, in context, can have no other reasonable meaning than to

1 encourage his election. The mailer reinforces its praise for Kerry's character by contrasting that
2 of Bush and Cheney, who "Could Have Served In Vietnam, But Didn't." Moreover, the mailer
3 acknowledges that the underlying facts of the ad are dated (e.g., "some say it's not important
4 now"), indicating that the real issue is who should be President. Finally, the mailer refers to the
5 duties of the Presidency when it points to Kerry's military experience as beneficial for making
6 decisions about "sending children into combat."

7 The expenditures for each of these three mailers caused TMF to surpass the \$1,000
8 statutory threshold, which provides a separate and independent basis for concluding that TMF
9 triggered political committee status. See 2 U.S.C. § 431(4)(A).

10 **2. TMF's Television Advertisements Expressly Advocated John Kerry's**
11 **Election and George Bush's Defeat**

12
13 TMF aired two television advertisements that expressly advocated John Kerry's election
14 and George Bush's defeat in the 2004 Presidential election. TMF paid
15 more than \$1,000 for each of these advertisements,¹⁵ which constitute "express advocacy" under
16 section 100.22(b).

17 The 30-second ad "First Priority" compares the "past four years," when "Bush's people
18 got paid," with Kerry's priorities of "creating good paying jobs with healthcare" and "rais[ing]
19 the minimum wage." The ad concludes with the tagline: "*You better wake up before you get*
20 *taken out.*" (emphasis added).

¹⁵ TMF's electioneering communication reports indicate that it spent approximately \$116,763 on the ad "Stand Up." See FEC Form 9 at 52 of Schedule 9-B (covering period Sept. 29 – Oct. 4, 2004) (one of two ads cited) and FEC Form 9 at 128 of Schedule 9-B (covering period Oct. 5-11, 2004) (one of six ads cited). Its reports do not indicate the costs for the ad "First Priority," and it has not been able to provide details of the costs for this particular ad. Nevertheless, based on the costs of "Stand Up," it is certain that TMF spent more than \$1,000 in producing and airing "First Priority."

1 Another 30-second television ad, entitled "Stand Up," features a screen image of Kerry
2 accompanied by a voiceover stating, "Only a man who stands up to his government can truly
3 lead." The ad then compares the two major candidates' purported approach to the Vietnam War:

4 John Kerry fought and bled in the Vietnam War. He fought side by side with brothers
5 who could not get out of the draft because they didn't have a rich father like George W.
6 Bush.
7

8 The ad concludes with the same tagline used in "First Priority": "*You better wake up before you*
9 *get taken out.*" (emphasis added).

10 Both television ads relate to the upcoming election by identifying and showing images of
11 the competing candidates, praising Kerry, while criticizing Bush. Both ads also feature the
12 exhortation "You better wake up before you get taken out." In the context of contrasting the
13 candidates, the exhortation to "wake up" can only be understood to be asking voters to reject
14 Bush, and instead vote for Kerry, because Bush intends to "take[] out" the voter. In many ways,
15 "You better wake up before you get taken out" is similar to the message in *FEC v. Furgatch*, 807
16 F.2d 857, 865 (9th Cir. 1987), where the Ninth Circuit determined that the phrase, "Don't let him
17 do it," was a proxy for the command to vote against Jimmy Carter. The use of the same
18 exhortation in both communications, which nominally address different issues, further supports
19 the notion that the common tagline exhorts viewers to vote for Kerry, rather than take some other
20 action. Finally, the "Stand Up" ad's focus on Kerry having "fought and bled" in Vietnam while
21 Bush allegedly avoided service, is clearly praising Kerry's character and fitness for the office of
22 President, which, in context, can have no other reasonable meaning than to encourage his
23 election. See 11 C.F.R. § 100.22(b).

1 The expenditures for each of these television advertisements caused TMF to surpass the
2 \$1,000 statutory threshold, which provides a separate and independent basis for concluding that
3 TMF triggered political committee status. *See* 2 U.S.C. § 431(4)(A).

4 **3. TMF's Radio Advertisements Expressly Advocated John Kerry's**
5 **Election and George Bush's Defeat**
6

7 TMF made expenditures of substantially more than \$1,000 for a radio advertisement that
8 expressly advocated John Kerry's election and George Bush's defeat in the upcoming
9 Presidential election.¹⁶

10 The 60-second radio ad asks: "*Wouldn't it be*
11 *good to have someone on our side?*" (emphasis added). It then criticizes Bush's economic
12 policies, stating that, *inter alia*, they "reward his friends on Wall Street" and result in "no-bid
13 contracts" for "Dick Cheney's Halliburton." The Bush policies are contrasted with Kerry's – the
14 ad argues that "John Kerry and John Edwards have a better idea" and that Kerry has "A plan
that's fair for working families"

15 This ad constitutes "express advocacy" under section 100.22(b). It relates to the
16 upcoming election by identifying the competing candidates, praising Kerry, while criticizing
17 Bush. By asking listeners, "Wouldn't it be good to have someone on our side?," the ad is
18 encouraging them to vote for the candidate whom the ad unmistakably implies is on the listeners'
19 side – in this case, Kerry. The only manner in which the listener can act on the message is to
20 vote for Kerry in the upcoming election.

21 The expenditures for this radio advertisement caused TMF to surpass the \$1,000 statutory
22 threshold, which provides a separate and independent basis for concluding that TMF triggered
23 political committee status. *See* 2 U.S.C. § 431(4)(A).

¹⁶ TMF reports that it spent \$22,622 on this ad. *See* FEC Form 9 at 1-4 of Schedule 9-B (covering period Oct. 27-28, 2004).

C. **TMF's Major Purpose Was Federal Campaign Activity**

The Supreme Court has held that “[t]o fulfill the purposes of the Act” and avoid “reach[ing] groups engaged purely in issue discussion,” only organizations whose major purpose is campaign activity can be considered political committees under the Act. *See, e.g., Buckley*, 424 U.S. at 79; *MCFL*, 479 U.S. at 262. As described below, courts have identified two ways by which an organization may establish its “major purpose.”

First, an organization’s “major purpose” may be established through public statements of its purpose. *See, e.g., FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004), *rev’d in part on other grounds, on reconsideration*, 2005 WL 588222 (D.D.C. Mar. 7, 2005) (court found organization evidenced its “major purpose” through its own materials, which stated the organization’s goal of supporting the election of Republican Party candidates for federal office, and through efforts to get prospective donors to consider supporting federal candidates); *FEC v. GOPAC, Inc.*, 917 F. Supp. 851, 859 (D.D.C. 1996) (“organization’s [major] purpose may be evidenced by its public statements of its purpose or by other means”); Advisory Opinion 2006-20 (Unity 08) (finding organization evidenced its major purpose through organizational statements of purpose on its website and to the Commission).

An organization can also satisfy the major purpose test through sufficient spending on campaign activity. *MCFL*, 479 U.S. at 262-264 (political committee status would be conferred on MCFL if its independent spending were to become so extensive that the group’s major purpose may be regarded as campaign activity); *see also Richey v. Tyson*, 120 F. Supp. 2d 1298, 1310, n.11 (S.D. Ala. 2002) (“As a threshold matter, the plaintiffs inaccurately describe the activity to which the major purpose inquiry relates. The plaintiffs describe the relevant major purpose as one to ‘expressly advocate’ a particular election result, while the Supreme Court has described the relevant major purpose (under FECA) as ‘the nomination or election of a

1 candidate,' or simply 'campaign activity,' terms that comfortably reach beyond explicit
2 directions to vote a particular way.") (internal citations omitted).

3 TMF's statements and activities demonstrate that its major purpose was to elect John
4 Kerry. From its inception, TMF presented itself to donors as a destination for "soft money"
5 that the DNC no longer could accept, but which TMF could use to support the Democratic
6 Presidential nominee. TMF proclaimed that, "Under the new law, the DNC ... will not be
7 able to raise enough money to pay for sufficient media in 2004 to make an impact. Without
8 the aggregated resources of The Media Fund, the Democrats simply will not be competitive
9 in this pre-convention period."¹⁷ TMF's president explained

10 that:

11 our presidential candidate would—without the soft money assistance that the
12 Democratic National Committee had been able to provide in prior years but was
13 cut off from this year would be at a very severe disadvantage and that one of the
14 purposes of The Media Fund ... was to try to fill in that gap with electronic media
15 and that gap, as I saw it, would start from the point that our—that the Democratic
16 candidate, whoever he was going to be, emerged as the putative nominee up
17 through, at least, the convention.

18
19
20
21 As described in detail above, TMF's fundraising presentations discussed TMF's "interest
22 in changing occupants in the White House." These presentations explicitly
23 cited the goal of reaching "270 electoral votes." Mr. Ickes testified that the
24 "presidency was motivating a lot of people," and he believed that if TMF could "get somebody

¹⁷ TMF initially focused on running ads from March through August 2004 because that was the time period during which the Democratic nominee for President would purportedly be at a disadvantage.

TMF was trying "to fill in that gap with electronic media" and that gap "would start from the point that ... the Democratic candidate ... emerged as the putative nominee up through, at least, the convention."

TMF noted that "Democrats act at our peril if we wait until late July to begin sufficient media, and thereby permit the Republicans to define the race and effectively win the election by late August."

1 to come out to vote around the presidency, the likelihood is that they will pull the lever for other
2 Democratic candidates....” *Id.* at 54:2-9.

3 Furthermore, Mr. Ickes testified that TMF’s focus was on running advertisements in the
4 “17 key states,” *id.* at 44:14-18, that “will decide who takes the oath of office for President in
5 January 2005.” TMF argued to potential contributors that:

6 The key to winning enough of these 17 battleground states will be the turnout of
7 Democratic base constituencies ... and, very importantly, the ability to identify
8 the key swing votes [sic] who are open to persuasion to vote Democratic.
9 Figuring out the effective issue messages that will move these swing voters and
10 delivering those messages between March and late August, before the race is
11 defined by the Bush campaign, is critical to the outcome of the 2004 race.

12
13 *Id.* at 8.

14 TMF’s spending further establishes that its major purpose was federal campaign
15 activity—specifically to defeat George Bush and elect John Kerry. TMF spent \$53,389,856—or
16 more than 92% of its reported disbursements—on television, radio and newspaper
17 advertisements and direct mail pieces criticizing George Bush, including ads (discussed above)
18 that expressly advocated Bush’s defeat or Kerry’s election.¹⁸ The vast majority of TMF’s
19 advertisements—34 out of 36 television advertisements, 20 out of 24 radio advertisements, and
20 26 out of 29 print advertisements—mention either George Bush or John Kerry. Moreover, not
21 one of TMF’s advertisements mentions any candidates other than the Presidential and Vice-
22 Presidential contenders in the 2004 general election. TMF’s self-proclaimed goal in producing

¹⁸ See IRS Forms 8872 for TMF (2004) (summarized in letter from James Lamb to Mark A. Goodin (July 22, 2005)). The balance of TMF’s disbursements included administrative and overhead costs. TMF did not make any contributions to state or local candidates. See IRS Forms 8872 for TMF (2004).

1 and running these advertisements was to decrease public support for Bush and to increase public
2 support for Kerry.¹⁹

3 Finally, consistent with its sole purpose for existence, TMF curtailed its operations after
4 the November 2004 Presidential election. Since January 1, 2005, TMF has raised and spent a
5 fraction of the amounts it put into the 2004 Presidential election. Specifically, TMF has raised
6 \$1.025 million and has spent approximately \$1.7 million, including \$900,000 in donations to
7 other organizations and \$198,125 in connection with two 2006 Senate races.²⁰

8 Thus, TMF satisfies *Buckley*'s major purpose test.

9 **D. TMF Triggered Political Committee Status and had a Duty to Disclose its**
10 **Receipts and Disbursements and to Comply with the Act's Contribution**
11 **Limits and Source Prohibitions**

12 Based upon the foregoing, TMF, which had the major purpose of federal campaign
13 activity, exceeded the \$1,000 threshold for political committee status set forth in 2 U.S.C.
14 § 431(4) by receiving over \$1,000 in contributions in response to fundraising solicitations clearly
15 indicating that the funds received would be targeted to the election or defeat of a clearly
16 identified federal candidate and by making over \$1,000 in expenditures for express advocacy
17 communications. As a result, TMF had a duty to register as a political committee with the

¹⁹ To achieve this goal, TMF used focus groups to test its proposed ads before running them, and it researched the effect of its ads once they ran. For example, TMF found that its "Saudi" ads depressed public support for Bush in the St. Louis television market. (the "Saudi" ads were "very effective ... 'among women, Kerry went from a 6-point lead to a 17-point lead.' That ain't chopped liver in any business"). As discussed above, TMF used the information about the effectiveness of its ads in soliciting funds from donors.

²⁰ Among its largest disbursements since January 2005, TMF donated \$850,000 to ACT and \$50,000 to America Votes, Inc., a 527 organization that served as an umbrella organization or clearinghouse for a coalition of almost 30 national organizations that collaborated to mobilize voters in the 2004 elections. See IRS Forms 8872 for 2005. TMF has continued to make disbursements characterized as "media consulting," and it reportedly engaged in limited voter contact activities in connection with the Virginia gubernatorial campaign in the fall of 2005. See *id.*; see also Chris Cillizza and Shailagh Murray, *Virginia Governor's Race to be an Experiment in Voter Turnout*, The Washington Post, Sept. 18, 2005, at A5. Finally, TMF disclosed that it spent \$198,125 on television ads that identified Senators George Allen and Jim Talent during the 2006 election cycle. See FEC Form 9 (Electioneering Communications) (Oct. 27, 2006).

1 Commission and disclose its receipts and disbursements to the public through reports filed with
2 the Commission. *See* 2 U.S.C. §§ 433 and 434. Accordingly, the General Counsel is prepared to
3 recommend that the Commission find probable cause to believe that The Media Fund violated 2
4 U.S.C. §§ 433 and 434 by failing to register and report as a federal political committee.

5 **IV. TMF ACCEPTED EXCESSIVE AND PROHIBITED CONTRIBUTIONS**

6 As a political committee, TMF must comply with the Act's contribution limits and source
7 restrictions. *See* 2 U.S.C. §§ 441a and 441b(a). TMF, however, accepted over \$45 million in
8 individual contributions in excess of \$5,000. *See* IRS Forms 8872 of JVC and TMF. These
9 excessive contributions included contributions from eight individuals who each gave in excess of
10 \$1 million to TMF (or to its joint fundraising committee, JVC).²¹ TMF also accepted over \$9
11 million in contributions from prohibited sources, most of which were labor organizations. *See*
12 IRS Forms 8872 of JVC and TMF.

13 Accordingly, the General Counsel is prepared to recommend that the Commission find
14 probable cause to believe that The Media Fund violated 2 U.S.C. §§ 441a(f) and 441b by
15 accepting excessive and prohibited contributions.
16

²¹ See footnote 5, *supra*.

V. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that The Media Fund violated 2 U.S.C. §§ 433 and 434 by failing to register with the Commission as a political committee and report its contributions and expenditures.
2. Find probable cause to believe that The Media Fund violated 2 U.S.C. § 441a(f) by knowingly accepting contributions in excess of \$5,000 and 2 U.S.C. § 441b(a) by knowingly accepting corporate and union contributions.

11/17/06
Date



Lawrence H. Norton
General Counsel



Rhonda J. Vosdingh
Associate General Counsel for Enforcement



Mark D. Shonkwiler
Assistant General Counsel



Mark A. Goodin
Attorney